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CASE NUMBER: 18-2-23240-6 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SEATTLE TIMES COMPANY,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No.

COMPLAINT FOR VIOLATIONS
OF PUBLIC RECORDS ACT

Plaintiff Seattle Times Company ("Plaintiff" or "the Times") hereby brings the following complaint against the City of Seattle ("Defendant" or "City").

I. INTRODUCTION

1. This is an action under the Public Records Act, Ch. 42.56 RCW ("PRA"), seeking to compel the City to provide full access to non-exempt public records related to text messages sent by former Mayor Ed Murray prior to his resignation. The records were sought by a Times reporter at a critical time in its news reporting about sexual abuse allegations against the former mayor. Although the City produced some records in response to the request, it violated the PRA by silently withholding critical records; failing to conduct an adequate search for responsive records; and/or failing to produce records in a timely and reasonable manner.

II. PARTIES

2. Plaintiff is a Delaware corporation with its principal place of business in Seattle.

1 3. Defendant City of Seattle is a municipal corporation located in King County,
2 Washington. It is an agency of the State of Washington for purposes of the PRA.

3 **III. JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over this action pursuant to RCW 2.08.010 and
5 RCW 42.56.550.

6 5. Venue is proper in this Court pursuant to RCW 4.12.020(1) and (2) (venue
7 proper in “county where the cause, or some part thereof, arose”), RCW 4.12.025(1) (venue
8 proper in the “county in which the defendant resides”) and RCW 42.56.550(1) (venue proper
9 under the PRA in the “County in which a record is maintained”).

10 **IV. FACTS**

11 6. Plaintiff is regularly engaged in the business of gathering and reporting news on
12 matters of public concern. It owns and publishes *The Seattle Times* newspaper and its website,
13 among other publications.

14 7. Beginning in April 2017, the Times reported the first of a series of news articles
15 about allegations that then-Mayor Murray had sexually abused a number of teenagers prior to
16 entering politics. In September 2017, in the wake of these reports, Murray resigned from
17 office.

18 8. On July 16, 2017, the Times published an investigative news article reporting
19 that in the 1980s, the Oregon Child Protective Services (“CPS”) had investigated a teenager’s
20 claim that Murray had abused him, and that the agency found the allegations to be credible. The
21 information in the article had never previously been reported in any news publication. The
22 facts underlying the article were of extreme and timely public interest, because, among other
23 things, the Oregon CPS findings provided independent, contemporaneous verification of abuse
24 allegations against Murray.

25 9. On or about July 26, 2017, Jim Brunner, in his capacity as a news reporter for
26 the Times, submitted a request under the PRA to the City of Seattle. The City refers to this
27 request as “C015977-072617” (the “Request”).

10. The Request sought “All text messages sent by Mayor Ed Murray to any city employee or employees, from July 10, 2017 to July 25, 2017, whether sent or received on city-owned or personal devices. Please also include any responses by city employees to said texts.”

11. Brunner was one of the two Times reporters primarily responsible for the news investigation and reporting of the allegations against Murray. He made the Request specifically to learn what Murray was saying to public officials and other city employees in connection with the Times' reporting of the July 16 article and in the wake of its publication.

12. On September 18, 2017, the City responded to the Request by producing certain records to Brunner (some with redactions), and by informing Brunner that the City's response was complete and that the Request was closed.

13. Unbeknownst to Brunner, the City did not produce all records responsive to his Request prior to closing it. Without informing Brunner, the City silently withheld text messages that Murray sent on July 16 and 17, 2017 to at least one city council member – public records that were newsworthy and would have been of critical public interest had they been disclosed in a timely manner and as required by the PRA.

14. On information and belief, the City has withheld other records responsive the Request.

V. CAUSE OF ACTION

First Claim: Failure to Produce Non-Exempt Records in Violation of PRA

15. Plaintiff hereby incorporates and re-alleges the allegations above.

16. The records requested in the Request are public records, and must be made available for inspection and copying under RCW 42.56.070(1).

17. The PRA requires agencies like the City to make requested public records available for inspection and copying, unless the records are exempt from disclosure in whole or in part. RCW 42.56.070(1); .080.

18. Defendant violated the PRA by failing to produce non-exempt records in response the Times Request.

1 19. Defendant violated the PRA by withholding and/or redacting information from
2 records responsive to the Times Request by claiming exemptions that do not apply.

3 **Second Claim: Silent Withholding of Responsive Records in Violation of PRA**

4 20. Plaintiff hereby realleges and incorporates by reference the allegations above.

5 21. An agency responding to a PRA request must either produce responsive records
6 or withhold them pursuant to a specifically identified statutory exemption. An agency may not
7 silently withhold records responsive to a PRA request.

8 22. Defendant's response to the Request violated the PRA by silently withholding
9 responsive records in its possession.

10 **Third Claim: Failure to Promptly Respond in Violation of PRA**

11 23. Plaintiff hereby realleges and incorporates by reference the allegations above.

12 24. The PRA requires agencies to make requested public records promptly available
13 for inspection and copying, unless the records are exempt from disclosure in whole or in part.
14 RCW 42.56.080 and .520.

15 25. Defendant violated the PRA because it failed to promptly disclose records in its
16 possession that were responsive to the Request.

17 **Fourth Claim: Inadequate Search for Records in Violation of PRA**

18 26. Plaintiff hereby realleges and incorporates by reference the allegations above.

19 27. An agency violates the PRA by failing to conduct an "adequate search" for
20 requested records. *See Neighborhood Alliance of Spokane County v. County of Spokane*, 172
21 Wn.2d 702, 261 P.3d 119 (2011).

22 28. Defendant's response to the Request violated the PRA because the City failed to
23 adequately search for responsive records.

24 **VI. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

26 1. An order that the records requested must be made immediately available to the
27 Times for inspection and copying;

1 2. An award to the Times of all costs, including reasonable attorneys' fees,
2 incurred in connection with its action and efforts to obtain the records, as provided in
3 RCW 42.56.550(4); and

4 3. An award to the Times of per-diem monetary penalties, as permitted by
5 RCW 42.56.550(4) and applicable case law, for each day from the date of the requests until the
6 date the records are actually provided to Plaintiff.

7 4. Such other relief as the Court deems just and proper.

8 DATED this 17th day of September, 2018.

9
10 Davis Wright Tremaine LLP
11 Attorneys for Seattle Times Company

12 By /s/Eric M. Stahl
13 Eric M. Stahl, WSBA #27619